

§ 901.4

Federal Mediation and Conciliation Service on all aspects of bargaining in the construction industry and to see that critical disputes are brought to the attention of the appropriate International Union and the national offices of an appropriate contractor association.

§ 901.4 Handling of disputes by Commission.

The Commission will determine the particular method of dispute handling appropriate for each dispute. Section 5(a) of the Executive order states,

The Commission or a panel designated by the Commission may, with the assistance of national labor organizations and national contractor associations where appropriate, seek to mediate such dispute, or make an investigation of the facts of the dispute and make such recommendations to the parties for the resolution thereof as it determines appropriate.

§ 901.5 Agreement to refrain from strike or lockout.

As part of its conditions for entering the dispute, the Commission may re-

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quest the parties to continue the terms or conditions of employment without the occurrence of a strike or lockout for a 30-day period, as set forth in section 5(a) of the Executive Order, to enhance the functions of mediation and other related activities.

§ 901.6 Authority of Executive Director.

The Commission delegates authority to the Executive Director to accept or reject requests for Commission involvement in those instances where a Commission meeting would not occur in sufficient time prior to a contract expiration date to permit such involvement.

§ 901.7 Inquiries and correspondence with Commission.

Inquiries to the Commission about the status of disputes or other matters should be directed as follows:

Executive Director, Construction Industry Collective Bargaining Commission, room 5220, Department of Labor Building, 14th and Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 961-3736.

CHAPTER X—NATIONAL MEDIATION BOARD

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ABBREVIATION:

The following abbreviation is used in this chapter:
NMB = *National Mediation Board*.

PART 1201—DEFINITIONS

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1201.1	Carrier.
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AUTHORITY: 44 Stat. 577, as amended; 45 U.S.C. 151–163.

SOURCE: 11 FR 177A–922, Sept. 11, 1946, unless otherwise noted. Redesignated at 13 FR 8740, Dec. 30, 1948.

§ 1201.1 Carrier.

The term *carrier* includes any express company, sleeping car company, carrier by railroad, subject to the Interstate Commerce Act (24 Stat. 379, as amended; 49 U.S.C. 1 *et seq.*), and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such “carrier.”

§ 1201.2 Exceptions.

(a) The term “carrier” shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power.

(b) The term “carrier” shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to carrier where delivery is not beyond the tipple, and the operation of equipment or facilities therefor or any of such activities.

§ 1201.3 Determination as to electric lines.

The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or

upon complaint of any part interested to determine after hearing whether any line operated by electric power falls within the terms of this part.

§ 1201.4 Employee.

The term *employee* as used in this part includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: *Provided, however,* That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission.

§ 1201.5 Exceptions.

The term “employee” shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

§ 1201.6 Representatives.

The term *representative* means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

PART 1202—RULES OF PROCEDURE

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1202.1	Mediation.
1202.2	Interpretation of mediation agreements.
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- 1202.4 Secret ballot.
- 1202.5 Rules to govern elections.
- 1202.6 Access to carrier records.
- 1202.7 Who may participate in elections.
- 1202.8 Hearings on craft or class.
- 1202.9 Appointment of arbitrators.
- 1202.10 Appointment of referees.
- 1202.11 Emergency boards.
- 1202.12 National Air Transport Adjustment Board.
- 1202.13 Air carriers.
- 1202.14 Labor members of Adjustment Board.
- 1202.15 Length of briefs in NMB hearing proceedings.

AUTHORITY: 44 Stat. 577, as amended; 45 U.S.C. 151-163.

SOURCE: 11 FR 177A-922, Sept. 11, 1946, unless otherwise noted. Redesignated at 13 FR 8740, Dec. 30, 1948.

§ 1202.1 Mediation.

The mediation services of the Board may be invoked by the parties, or either party, to a dispute between an employee or group of employees and a carrier concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference; also, concerning a dispute not referable to the National Railroad Adjustment Board or appropriate airline adjustment board, when not adjusted in conference between the parties, or where conferences are refused. The National Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

§ 1202.2 Interpretation of mediation agreements.

Under section 5, Second, of title I of the Railway Labor Act, in any case in which a controversy arises over the meaning or application of any agreement reached through mediation, either party to said agreement, or both, may apply to the National Mediation Board for an interpretation of the meaning or application of such agreement. Upon receipt of such request, the Board shall, after a hearing of both sides, give its interpretation within 30 days.

§ 1202.3 Representation disputes.

If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance

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with the requirements of the Railway Labor Act, it is the duty of the Board, upon request of either party to the dispute, to investigate such dispute and certify to both parties, in writing, the name or names of individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and to certify the same to the carrier.

§ 1202.4 Secret ballot.

In conducting such investigation, the Board is authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier.

§ 1202.5 Rules to govern elections.

In the conduct of a representation election, the Board shall designate who may participate in the election, which may include a public hearing on craft or class, and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within 10 days designate the employees who may participate in the election.

§ 1202.6 Access to carrier records.

Under the Railway Labor Act the Board has access to and has power to make copies of the books and records of the carriers to obtain and utilize such information as may be necessary to fulfill its duties with respect to representatives of carrier employees.

§ 1202.7 Who may participate in elections.

As mentioned in §1202.3, when disputes arise between parties to a representation dispute, the National Mediation Board is authorized by the Act to determine who may participate in the selection of employees representatives.

§ 1202.8 Hearings on craft or class.

In the event the contesting parties or organizations are unable to agree on the employees eligible to participate in

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the selection of representatives, and either party makes application by letter for a formal hearing before the Board to determine the dispute, the Board may in its discretion hold a public hearing, at which all parties interested may present their contentions and argument, and at which the carrier concerned is usually invited to present factual information. At the conclusion of such hearings the Board customarily invites all interested parties to submit briefs supporting their views, and after considering the evidence and briefs, the Board makes a determination or finding, specifying the craft or class of employees eligible to participate in the designation of representatives.

§ 1202.9 Appointment of arbitrators.

Section 5, Third, (a) of the Railway Labor Act provides in the event mediation of a dispute is unsuccessful, the Board endeavors to induce the parties to submit their controversy to arbitration. If the parties so agree, and the arbitrators named by the parties are unable to agree upon the neutral arbitrator or arbitrators, as provided in section 7 of the Railway Labor Act, it becomes the duty of the Board to name such neutral arbitrators and fix the compensation for such service. In performing this duty, the Board is required to appoint only those whom it deems wholly disinterested in the controversy, and to be impartial and without bias as between the parties thereto.

§ 1202.10 Appointment of referees.

Section 3, Third, (e) title I of the act makes it the duty of the National Mediation Board to appoint and fix the compensation for service a neutral person known as a "referee" in any case where a division of the National Railroad Adjustment Board becomes deadlocked on an award, such referee to sit with the division and make an award. The National Mediation Board in appointing referees is bound by the same requirements that apply in the appointment of neutral arbitrators as outlined in §1202.9

§ 1202.11 Emergency boards.

Under the terms of section 10 of the Railway Labor Act, if a dispute between a carrier and its employees is

not adjusted through mediation or the other procedures prescribed by the act, and should, in the judgment of the National Mediation Board, threaten to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Board shall notify the President, who may thereupon, in his discretion, create an emergency board to investigate and report to him respecting such dispute. An emergency board may be composed of such number of persons as the President designates, and persons so designated shall not be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of emergency board members is fixed by the President. An emergency board is created separately in each instance, and is required to investigate the facts as to the dispute and report thereon to the President within 30 days from the date of its creation.

§ 1202.12 National Air Transport Adjustment Board.

Under section 205, title II, of the Railway Labor Act, when in the judgment of the National Mediation Board it becomes necessary to establish a permanent national board of adjustment for the air carriers subject to the act to provide for the prompt and orderly settlement of disputes between the employees and the carriers growing out of grievances, or out of the application or interpretation of working agreements, the Board is empowered by its order made, published, and served, to direct the air carriers and labor organizations, national in scope, to select and designate four representatives to constitute a Board known as the National Air Transport Adjustment Board. Two members each shall be selected by the air carriers and the labor organizations of their employees. Up to the present time, it has not been considered necessary to establish the National Air Transport Adjustment Board.

§ 1202.13 Air carriers.

By the terms of title II of the Railway Labor Act, which was approved April 10, 1936, all of title I, except section 3, which relates to the National

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Railroad Adjustment Board, was extended to cover every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and to all employees or subordinate officials of such air carriers.

§ 1202.14 Labor members of Adjustment Board.

Section 3, First, (f) of title I of the Railway Labor Act relating to the settlement of disputes among labor organizations as to the qualification of any such organization to participate in the selection of labor members of the Adjustment Board, places certain duties upon the National Mediation Board. This section of the act is quoted below:

(f) In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit, the secretary shall notify the Mediation Board accordingly, and within 10 days after receipt of such advice the Mediation Board shall request those national labor organizations duly qualified as per paragraph (c) of this section to participate in the selection and designation of the labor members of the Adjustment Board to select a representative. Such representatives, together with a representative likewise designated by the claimant, and a third or neutral party designated by the Mediation Board, constituting a board of three, shall within 30 days after the appointment of the neutral member investigate the claims of the labor organization desiring participation and decide whether or not it was organized in accordance with section 2, hereof, and is otherwise properly qualified to participate in the selection of the labor members of the Adjustment Board, and the findings of such boards of three shall be final and binding.

§ 1202.15 Length of briefs in NMB hearing proceedings.

(a) In the event briefs are authorized by the Board or the assigned Hearing Officer, principal briefs shall not exceed fifty (50) pages in length and reply briefs, if permitted, shall not exceed twenty-five (25) pages in length unless the participant desiring to submit a brief in excess of such limitation re-

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quests a waiver of such limitation from the Board which is received within five (5) days of the date on which the briefs were ordered or, in the case of a reply brief, within five (5) days of receipt of the principal brief, and in such cases the Board may require the filing of a summary of argument, suitably paragraphed which should be a succinct, but accurate and clear, condensation of the argument actually made in the brief.

(b) The page limitations provided by this section (§1202.15) are exclusive of those pages containing the table of contents, tables of citations and any copies of administrative or court decisions which have been cited in the brief. All briefs shall be submitted on standard 8½ x 11 inch paper with double spaced type.

(c) Briefs not complying with this section (§1202.15) will be returned promptly to their initiators.

[44 FR 10601, Feb. 22, 1979]

PART 1203—APPLICATIONS FOR SERVICE

Sec.

1203.1 Mediation services.

1203.2 Investigation of representation disputes.

1203.3 Interpretation of mediation agreements.

AUTHORITY: 44 Stat. 577, as amended; 45 U.S.C. 151-163.

§ 1203.1 Mediation services.

Applications for the mediation services of the National Mediation Board under section 5, First, of the Railway Labor Act, may be made on printed forms N.M.B. 2, copies of which may be secured from the Board's Chief of Staff's Office or on the Internet at www.nmb.gov. Such applications and all correspondence connected therewith should be submitted in duplicate. The application should show the exact nature of the dispute, the number of employees involved, name of the carrier and name of the labor organization, date of agreement between the parties, if any, date and copy of notice served by the invoking party to the other and date of final conference between the parties. Application should be signed by the highest officer of the

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carrier who has been designated to handle disputes under the Railway Labor Act, or by the chief executive of the labor organization, whichever party files the application. These applications, after preliminary investigation in the Board's offices, are given docket number in series "A" and the cases are assigned for mediation to Board members or to mediators on the Board's staff.

[11 FR 177A-923, Sept. 11, 1946. Redesignated at 13 FR 8740, Dec. 30, 1948, as amended at 64 FR 40287, July 26, 1999]

§ 1203.2 Investigation of representation disputes.

Applications for the services of the National Mediation Board under section 2, ninth, of the Railway Labor Act to investigate representation disputes among carriers' employees may be made on printed forms NMB-3, copies of which may be secured from the Board's Representation and Legal Department or on the Internet at www.nmb.gov. Such applications and all correspondence connected therewith should be filed in duplicate and the applications should be accompanied by signed authorization cards from the employees composing the craft or class involved in the dispute. The applications should show specifically the name or description of the craft or class of employees involved, the name of the invoking organization, the name of the organization currently representing the employees, if any, and the estimated number of employees in each craft or class involved. The applications should be signed by the chief executive of the invoking organization, or other authorized officer of the organization. These disputes are given docket numbers in series "R".

[43 FR 30053, July 13, 1978, as amended at 64 FR 40287, July 26, 1999]

§ 1203.3 Interpretation of mediation agreements.

(a) Applications may be filed with the Board's Chief of Staff under section 5, Second, of the Railway Labor Act, for the interpretation of agreements reached in mediation under section 5, First. Such applications may be made by letter from either party to the mediation agreement stating the specific

question on which an interpretation is desired.

(b) This function of the National Mediation Board is not intended to conflict with the provisions of section 3 of the Railway Labor Act. Providing for interpretation of agreements by the National Railroad Adjustment Board. Many complete working agreements are revised with the aid of the Board's mediating services, and it has been the Board's policy that disputes involving the interpretation or application of such agreements should be handled by the Adjustment Board. Under this section of the law the Board when called upon may only consider and render an interpretation on the specific terms of an agreement actually signed in mediation, and not for matters incident or corollary thereto.

[11 FR 177A-923, Sept. 11, 1946. Redesignated at 13 FR 8740, Dec. 30, 1948, as amended at 64 FR 40287, July 26, 1999]

PART 1204—LABOR CONTRACTS

Sec.

1204.1 Making and maintaining contracts.

1204.2 Arbitrary changing of contracts.

1204.3 Filing of contracts.

AUTHORITY: 44 Stat. 577, as amended; 45 U.S.C. 151-163.

SOURCE: 11 FR 177A-924, Sept. 11, 1946, unless otherwise noted. Redesignated at 13 FR 8740, Dec. 30, 1948.

§ 1204.1 Making and maintaining contracts.

It is the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain contracts covering rates of pay, rules, and working conditions.

§ 1204.2 Arbitrary changing of contracts.

No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of the Railway Labor Act.

§ 1204.3 Filing of contracts.

Section 5, Third, (e) of the Railway Labor Act requires all carriers to file with the National Mediation Board

copies of all contracts in effect with organizations representing their employees, covering rates of pay, rules, and working conditions. Several thousand of such contracts are on file in the Board's Washington office and are available for inspection by interested parties.

PART 1205—NOTICES IN RE: RAILWAY LABOR ACT

Sec.

- 1205.1 Handling of disputes.
- 1205.2 Employees' Bill of Rights.
- 1205.3 General Order No. 1.
- 1205.4 Substantive rules.

AUTHORITY: 44 Stat. 577, as amended; 45 U.S.C. 151-163.

SOURCE: 11 FR 177A-924, Sept. 11, 1946, unless otherwise noted. Redesignated at 13 FR 8740, Dec. 30, 1948.

§ 1205.1 Handling of disputes.

Section 2, Eighth, of the Railway Labor Act provides that every carrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified by order of the Mediation Board and requires that all disputes between a carrier and its employees will be handled in accordance with the requirements of the act. In such notices there must be printed verbatim, in large type, the third, fourth, and fifth paragraphs of said section 2, Eighth, of the Railway Labor Act.

§ 1205.2 Employees' Bill of Rights.

The provisions of the third, fourth, and fifth paragraphs of section 2 are by law made a part of the contract of employment between the carrier and each employee and shall be binding upon the parties regardless of any other express or implied agreements between them. Under these provisions the employees are guaranteed the right to organize without interference of management, the right to determine who shall represent them, and the right to bargain collectively through such representatives. This section makes it unlawful for any carrier to require any person seeking employment to sign any contract promising to join or not to join a labor organization. Violation of the foregoing provisions is a misdemeanor

under the law and subjects the offender to punishment.

§ 1205.3 General Order No. 1.

General Order No. 1, issued August 14, 1934, is the only order the Board has issued since its creation in 1934. This order sent to the President of each carrier coming under the act transmitted a sample copy of the Mediation Board's Form MB-1 known as "Notice in re: Railway Labor Act." The order prescribes that such notices are to be standard as to contents, dimensions of sheet, and size of type and that they shall be posted promptly and maintained continuously in readable condition on all the usual and customary bulletin boards giving information to employees and at such other places as may be necessary to make them accessible to all employees. Such notices must not be hidden by other papers or otherwise obscured from view.

§ 1205.4 Substantive rules.

The only substantive rules issued by the National Mediation Board are those authorized under section 2, Ninth, of the Railway Labor Act to implement the procedure of determining employee representation.

[12 FR 2451, April 16, 1947. Redesignated at 13 FR 8740, Dec. 30, 1948, as amended at 64 FR 40287, July 26, 1999]

PART 1206—HANDLING REPRESENTATION DISPUTES UNDER THE RAILWAY LABOR ACT

Sec.

- 1206.1 Run-off elections.
- 1206.2 Percentage of valid authorizations required to determine existence of a representation dispute.
- 1206.3 Age of authorization cards.
- 1206.4 Time limits on applications.
- 1206.5 Necessary evidence of intervenor's interest in a representation dispute.
- 1206.6 Eligibility of dismissed employees to vote.
- 1206.7 Construction of this part.
- 1206.8 Amendment or rescission of rules in this part.

AUTHORITY: 44 Stat. 577, as amended; 45 U.S.C. 151-163.

SOURCE: 12 FR 3083, May 10, 1947, unless otherwise noted. Redesignated at 13 FR 8740, Dec. 30, 1948.

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§ 1206.1 Run-off elections.

(a) If in an election among any craft or class no organization or individual receives a majority of the legal votes cast, or in the event of a tie vote, a second or run-off election shall be held forthwith: *Provided*, That a written request by an individual or organization entitled to appear on the run-off ballot is submitted to the Board within ten (10) days after the date of the report of results of the first election.

(b) In the event a run-off election is authorized by the Board, the names of the two individuals or organizations which received the highest number of votes cast in the first election shall be placed on the run-off ballot, and no blank line on which votes may write in the name of any organization or individual will be provided on the run-off ballot.

(c) Employees who were eligible to vote at the conclusion of the first election shall be eligible to vote in the run-off election except (1) those employees whose employment relationship has terminated, and (2) those employees who are no longer employed in the craft or class.

§ 1206.2 Percentage of valid authorizations required to determine existence of a representation dispute.

(a) Where the employees involved in a representation dispute are represented by an individual or labor organization, either local or national in scope and are covered by a valid existing contract between such representative and the carrier a showing of proved authorizations (checked and verified as to date, signature, and employment status) from at least a majority of the craft or class must be made before the National Mediation Board will authorize an election or otherwise determine the representation desires of the employees under the provisions of section 2, Ninth, of the Railway Labor Act.

(b) Where the employees involved in a representation dispute are unrepresented, a showing of proved authorizations from at least thirty-five (35) percent of the employees in the craft or class must be made before the National Mediation Board will authorize an election or otherwise determine the rep-

resentation desires of the employees under the provisions of section 2, Ninth, of the Railway Labor Act.

§ 1206.3 Age of authorization cards.

Authorizations must be signed and dated in the employee's own handwriting or witnessed mark. No authorizations will be accepted by the National Mediation Board in any employee representation dispute which bear a date prior to one year before the date of the application for the investigation of such dispute.

§ 1206.4 Time limits on applications.

Except in unusual or extraordinary circumstances, the National Mediation Board will not accept an application for investigation of a representation dispute among employees of a carrier:

(a) For a period of two (2) years from the date of a certification covering the same craft or class of employees on the same carrier, and

(b) For a period of one (1) year from the date on which:

(1) The Board dismissed a docketed application after having conducted an election among the same craft or class of employees on the same carrier and less than a majority of eligible voters participated in the election; or

(2) The Board dismissed a docketed application covering the same craft or class of employees on the same carrier because no dispute existed as defined in § 1206.2 of these rules; or

(3) The Board dismissed a docketed application after the applicant withdrew an application covering the same craft or class of employees on the same carrier after the application was docketed by the Board.

[44 FR 10602, Feb. 22, 1979]

§ 1206.5 Necessary evidence of intervenor's interest in a representation dispute.

In any representation dispute under the provisions of section 2, Ninth, of the Railway Labor Act, an intervening individual or organization must produce proved authorization from at least thirty-five (35) percent of the craft or class of employees involved to warrant placing the name of the intervenor on the ballot.

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§ 1206.6 Eligibility of dismissed employees to vote.

Dismissed employees whose requests for reinstatement account of wrongful dismissal are pending before proper authorities, which includes the National Railroad Adjustment Board or other appropriate adjustment board, are eligible to participate in elections among the craft or class of employees in which they are employed at time of dismissal. This does not include dismissed employees whose guilt has been determined, and who are seeking reinstatement on a leniency basis.

§ 1206.7 Construction of this part.

The rules and regulations in this part shall be liberally construed to effectuate the purposes and provisions of the act.

§ 1206.8 Amendment or rescission of rules in this part.

(a) Any rule or regulation in this part may be amended or rescinded by the Board at any time.

(b) Any interested person may petition the Board, in writing, for the issuance, amendment, or repeal of a rule or regulation in this part. An original and three copies of such petition shall be filed with the Board in Washington, DC, and shall state the rule or regulation proposed to be issued, amended, or repealed, together with a statement of grounds in support of such petition.

(c) Upon the filing of such petition, the Board shall consider the same, and may thereupon either grant or deny the petition in whole or in part, conduct an appropriate hearing thereon and make other disposition of the petition. Should the petition be denied in whole or in part, prompt notice shall be given of the denial, accompanied by a simple statement of the grounds unless the denial is self-explanatory.

PART 1207—ESTABLISHMENT OF SPECIAL ADJUSTMENT BOARDS

Sec.

1207.1 Establishment of special adjustment boards (PL Boards).

1207.2 Requests for Mediation Board action.

1207.3 Compensation of neutrals.

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1207.4 Designation of PL Boards, filing of agreements, and disposition of records.

AUTHORITY: 44 Stat. 577, as amended; 45 U.S.C. 151–163.

SOURCE: 31 FR 14644, Nov. 17, 1966, unless otherwise noted.

§ 1207.1 Establishment of special adjustment boards (PL Boards).

Public Law 89–456 (80 Stat. 208) governs procedures to be followed by carriers and representatives of employees in the establishment and functioning of special adjustment boards, hereinafter referred to as PL Boards. Public Law 89–456 requires action by the National Mediation Board in the following circumstances:

(a) *Designation of party member of PL Board.* Public Law 89–456 provides that within thirty (30) days from the date a written request is made by an employee representative upon a carrier, or by a carrier upon an employee representative, for the establishment of a PL Board, an agreement establishing such a Board shall be made. If, however, one party fails to designate a member of the Board, the party making the request may ask the Mediation Board to designate a member on behalf of the other party. Upon receipt of such request, the Mediation Board will notify the party which failed to designate a partisan member for the establishment of a PL Board of the receipt of the request. The Mediation Board will then designate a representative on behalf of the party upon whom the request was made. This representative will be an individual associated in interest with the party he is to represent. The designee, together with the member appointed by the party requesting the establishment of the PL Board, shall constitute the Board.

(b) *Appointment of a neutral to determine matters concerning the establishment and/or jurisdiction of a PL Board.* (1) When the members of a PL Board constituted in accordance with paragraph (a) of this section, for the purpose of resolving questions concerning the establishment of the Board and/or its jurisdiction, are unable to resolve these matters, then and in that event, either party may ten (10) days thereafter request the Mediation Board to appoint a

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neutral member to determine these procedural issues.

(2) Upon receipt of this request, the Mediation Board will notify the other party to the PL Board. The Mediation Board will then designate a neutral member to sit with the PL Board and resolve the procedural issues in dispute. When the neutral has determined the procedural issues in dispute, he shall cease to be a member of the PL Board.

(c) *Appointment of neutral to sit with PL Boards and dispose of disputes.* (1) When the members of a PL Board constituted by agreement of the parties, or by the appointment of a party member by the Mediation Board, as described in paragraph (a) of this section, are unable within ten (10) days after their failure to agree upon an award to agree upon the selection of a neutral person, either member of the Board may request the Mediation Board to appoint such neutral person and upon receipt of such request, the Mediation Board shall promptly make such appointment.

(2) A request for the appointment of a neutral under paragraph (b) of this section or this paragraph (c) shall;

(i) Show the authority for the request—Public Law 89-456, and

(ii) Define and list the proposed specific issues or disputes to be heard.

§ 1207.2 Requests for Mediation Board action.

(a) Requests for the National Mediation Board to appoint neutrals or party representatives should be made on NMB Form 5.

(b) Those authorized to sign request on behalf on parties:

(1) The “representative of any craft or class of employees of a carrier,” as referred to in Public Law 89-456, making request for Mediation Board action, shall be either the General Chairman, Grand Lodge Officer (or corresponding officer of equivalent rank), or the Chief Executive of the representative involved. A request signed by a General Chairman or Grand Lodge Officer (or corresponding officer of equivalent rank) shall bear the approval of the Chief Executive of the employee representative.

(2) The “carrier representative” making such a request for the Mediation Board’s action shall be the highest carrier officer designated to handle matters arising under the Railway Labor Act.

(c) *Docketing of PL Board agreements:* The National Mediation Board will docket agreements establishing PL Board, which agreements meet the requirements of coverage as specified in Public Law 89-456. No neutral will be appointed under §1207.1(c) until the agreement establishing the PL Board has been docketed by the Mediation Board.

§ 1207.3 Compensation of neutrals.

(a) *Neutrals appointed by the National Mediation Board.* All neutral persons appointed by the National Mediation Board under the provisions of §1207.1 (b) and (c) will be compensated by the Mediation Board in accordance with legislative authority. Certificates of appointment will be issued by the Mediation Board in each instance.

(b) *Neutrals selected by the parties.* (1) In cases where the party members of a PL Board created under Public Law 89-456 mutually agree upon a neutral person to be a member of the Board, the party members will jointly so notify the Mediation Board, which Board will then issue a certificate of appointment to the neutral and arrange to compensate him as under paragraph (a) of this section.

(2) The same procedure will apply in cases where carrier and employee representatives are unable to agree upon the establishment and jurisdiction of a PL Board, and mutually agree upon a procedural neutral person to sit with them as a member and determine such issues.

§ 1207.4 Designation of PL Boards, filing of agreements, and disposition of records.

(a) *Designation of PL Boards.* All special adjustment boards created under Public Law 89-456 will be designated PL Boards, and will be numbered serially, commencing with No. 1, in the order of their docketing by the National Mediation Board.

(b) *Filing of agreements.* The original agreement creating the PL Board

under Public Law 89-456 shall be filed with the National Mediation Board at the time it is executed by the parties. A copy of such agreement shall be filed by the parties with the Administrative Officer of the National Railroad Adjustment Board, Chicago, Ill.

(c) *Disposition of records.* Since the provisions of section 2(a) of Public Law 89-456 apply also to the awards of PL Boards created under this Act, two copies of all awards made by the PL Boards, together with the record of proceedings upon which such awards are based, shall be forwarded by the neutrals who are members of such Boards, or by the parties in case of disposition of disputes by PL Boards without participation of neutrals, to the Administrative Officer of the National Railroad Adjustment Board, Chicago, Ill., for filing, safekeeping, and handling under the provisions of section 2(q), as may be required.

PART 1208—AVAILABILITY OF INFORMATION

Sec.

1208.1 Purpose.

1208.2 Production or disclosure of material or information.

1208.3 General policy.

1208.4 Material relating to representation function.

1208.5 Material relating to mediation function—confidential.

1208.6 Schedule of fees and methods of payment for services rendered.

1208.7 Compliance with subpoenas.

AUTHORITY: 5 U.S.C. 552; 45 U.S.C. 151-163.

SOURCE: 39 FR 1751, Jan. 14, 1974, unless otherwise noted.

§ 1208.1 Purpose.

The purpose of this part is to set forth the basic policies of the National Mediation Board and the National Railroad Adjustment Board in regard to the availability and disclosure of information in the possession of the NMB and the NRAB.

§ 1208.2 Production or disclosure of material or information.

(a) *Requests for identifiable records and copies.* (1) All requests for National Mediation Board records shall be filed in writing by mailing, faxing, or delivering the request to the Chief of Staff,

National Mediation Board, Washington, DC 20572.

(2) The request shall reasonably describe the records being sought in a manner which permits identification and location of the records.

(i) If the description is insufficient to locate the records, the National Mediation Board will so notify the person making the request and indicate the additional information needed to identify the records requested.

(ii) Every reasonable effort shall be made by the Board to assist in the identification and location of the records sought.

(3) Upon receipt of a request for the records the Chief of Staff shall maintain records in reference thereto which shall include the date and time received, the name and address of the requester, the nature of the records requested, the action taken, the date the determination letter is sent to the requester, appeals and action thereon, the date any records are subsequently furnished the number of staff hours and grade levels of persons who spent time responding to the request, and the payment requested and received.

(4) All time limitations established pursuant to this section with respect to processing initial requests and appeals shall commence at the time a written request for records is received at the Board's offices in Washington, DC.

(i) An oral request for records shall not begin any time requirement.

(ii) [Reserved]

(b) *Processing the initial request—(1) Time limitations.* Within 20 working days (excepting Saturdays, Sundays, and working holidays) after a request for records is received, the Chief of Staff shall determine and inform the requester by letter whether or the extent to which the request will be complied with, unless an extension is taken under paragraph (b)(3) of this section.

(2) Such reply letter shall include:

(i) A reference to the specific exemption or exemptions under the Freedom of Information Act (5 U.S.C. 552) authorizing the withholding of the record, a brief explanation of how the exemption applies to the record withheld.

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(ii) The name or names and positions of the person or persons, other than the Chief of Staff, responsible for the denial.

(iii) A statement that the denial may be appealed within thirty days by writing to the Chairman, National Mediation Board, Washington, D. C. 20572, and that judicial review will thereafter be available in the district in which the requester resides, or has his principal place of business, or the district in which the agency records are situated, or the District of Columbia.

(3) *Extension of time.* In unusual circumstances as specified in this paragraph, the Chief of Staff may extend the time for initial determination on requests up to a total of ten days (excluding Saturdays, Sundays, and legal public holidays). Extensions shall be granted in increments of five days or less and shall be made by written notice to the requester which sets forth the reason for the extension and the date on which a determination is expected to be dispatched. As used in this paragraph “unusual circumstances” means, but only to the extent necessary to the proper processing of the request:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency or another division having substantial interest in the determination of the request, or the need for consultation among two or more components of the agency having substantial subject matter interest therein.

(4) *Treatment of delay as a denial.* If no determination has been dispatched at the end of the ten-day period, or the last extension thereof, the requester may deem his request denied, and exercise a right of appeal, in accordance with paragraph (c) of this section. When no determination can be dispatched within the applicable time

limit, the responsible official shall nevertheless continue to process the request; on expiration of the time limit he shall inform the requester of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to treat the delay as a denial and to appeal to the Chairman of the Board in accordance with paragraph (c) of this section and he may ask the requester to forego appeal until a determination is made.

(c) *Appeals to the Chairman of the Board.* (1) When a request for records has been denied in whole or in part by the Chief of Staff or other person authorized to deny requests, the requester may, within thirty days of its receipt, appeal the denial to the Chairman of the Board. Appeals to the Chairman shall be in writing, addressed to the Chairman, National Mediation Board, Washington, DC 20572.

(2) The Chairman of the Board will act upon the appeal within twenty working days (excluding Saturdays, Sundays and legal public holidays) of its receipt unless an extension is made under paragraph (c)(3) of this section.

(3) In unusual circumstances as specified in this paragraph (c)(3), the time for action on an appeal may be extended up to ten days (excluding Saturdays, Sundays and legal public holidays) minus any extension granted at the initial request level pursuant to paragraph (b)(3) of this section. Such extension shall be made written notice to the requester which sets forth the reason for the extension and the date on which a determination is expected to be dispatched. As used in this paragraph (c)(3) “unusual circumstances” means, but only to the extent necessary to the proper processing of the appeal:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which shall be conducted with all practicable

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speed, with another agency or another division having substantial interest in the determination of the request or the need for consultation among components of the agency having substantial subject matter interest therein.

(4) *Treatment of delay as a denial.* If no determination on the appeal has been dispatched at the end of the twenty-day period or the last extension thereof, the requester is deemed to have exhausted his administrative remedies, giving rise to a right of review in a district court of the United States, as specified in 5 U.S.C. 552(a)(4). When no determination can be dispatched within the applicable time limit, the appeal will nevertheless continue to be processed; on expiration of the time limit the requester shall be informed of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to seek judicial review in the United States district court in the district in which he resides or has his principal place of business, the district in which the Board records are situated or the District of Columbia. The requester may be asked to forego judicial review until determination of the appeal.

(d) *Indexes of certain records.* The National Mediation Board at its office in Washington, DC will maintain, make available for public inspection and copying, and publish quarterly (unless the Board determines by order published in the FEDERAL REGISTER that such publication would be unnecessary or impracticable) a current index of the materials available at the Board offices which are required to be indexed by 5 U.S.C. 552(a)(2).

(1) A copy of such index shall be available at cost from the National Mediation Board, Washington, DC 20572.

(2) [Reserved]

[63 FR 44394, Aug. 19, 1998]

§ 1208.3 General policy.

(a) Public policy and the successful effectuation of the NMB's mission require that Board members and the employees of the NMB maintain a reputation for impartiality and integrity. Labor and management and other interested parties participating in mediation efforts must have assurance, as

must labor organizations and individuals involved in questions of representation, that confidential information disclosed to Board members and employees of the NMB will not be divulged, voluntarily or by compulsion.

(b) Notwithstanding this general policy, the Board will under all circumstances endeavor to make public as much information as can be allowed.

§ 1208.4 Material relating to representation function.

(a) The documents constituting the record of a case, such as the notices of hearing, motions, rulings, orders, stenographic reports of the hearings, briefs, exhibits, findings upon investigation, determinations of craft or class, interpretations, dismissals, withdrawals, and certifications, are matters of official record and are available for inspection and examination during the usual business hours at the Board's offices in Washington.

(b) This part notwithstanding, the Board will treat as confidential the evidence submitted in connection with a representation dispute and the investigatory file pertaining to the representation function.

§ 1208.5 Material relating to mediation function—confidential.

(a) All files, reports, letters, memoranda, documents, and papers (hereinafter referred to as confidential documents) relating to the mediation function of the NMB, in the custody of the NMB or its employees relating to or acquired in their mediatory capacity under any applicable section of the Railway Labor Act of 1926, as amended, are hereby declared to be confidential. No such confidential documents or the material contained therein shall be disclosed to any unauthorized person, or be taken or withdrawn, copied or removed from the custody of the NMB or its employees by any person or by any agent of such person or his representative without the explicit consent of the NMB.

(b) However, the following specific documents: Invocation or proffer of mediation, the reply or replies of the parties, the proffer of arbitration and replies thereto, and the notice of failure of mediatory efforts in cases under

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section 5, First of the Railway Labor Act, as amended, are matters of official record and are available for inspection and examination.

(c) Interpretations of mediation agreements by the NMB, arising out of section 5, Second, of the Railway Labor Act, as amended, are public records and are therefore open for public inspection and examination.

§ 1208.6 Schedule of fees and methods of payment for services rendered.

(a) *Definitions.* For the purposes of this section the following definitions apply:

(1) *Direct costs* means those expenditures which the National Mediation Board actually incurs in searching for, duplicating, and, in the case of commercial requesters, reviewing documents to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (the basic rate of pay for the employee plus sixteen percent of the rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space and heating or lighting the facility in which the records are stored.

(2) *Search* includes all time spent looking for material that is responsive to a request, including page-by-page and line-by-line identification of material within documents. Searches may be done manually or by computer using existing programming.

(3) *Duplication* refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microfilm, audiovisual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

(4) *Review* refers to the process of examining documents located in response to a commercial use request (see paragraph (a)(5) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues

regarding the application of exemptions.

(5) *Commercial use request* refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the NMB will look first to the use which a requester will put the document requested. Where the NMB has reasonable cause to doubt the use is not clear from the request itself, the National Mediation Board may seek additional clarification before assigning the request to a specific category.

(6) *Educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education and an institution of vocational education, which operates a program or programs of scholarly research.

(7) *Non-commercial scientific institution* refers to an institution that is not operated on a commercial basis as that term is defined in paragraph (a)(5) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(8) *Representative of the news media* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term “news” means information that is about current events or that would be of current interest to the public. These examples are not intended to be all inclusive. In the case of “freelance” journalists, they may be regarded as working for a news organization if they demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the NMB may also look to the past publication record of a requester in making this determination.

(b) *Exceptions of fee charges.* (1) With the exception of requesters seeking documents for a commercial use, the

NMB will provide the first 100 pages of duplication and the first two hours of search time without charge. The word “pages” in this paragraph (b) refers to paper copies of standard size, usually 8.5”x11”, or their equivalent in microfiche or computer disks. The term “search time” in this paragraph (b) is based on a manual search for records. In applying this term to searches made by computer, when the cost of the search as set forth in paragraph (d)(2) of this section equals the equivalent dollar amount of two hours of the salary of the person performing the search, the NMB will begin assessing charges for computer search.

(2) The NMB will not charge fees to any requester, including commercial use requesters, if the cost of collecting the fee would be equal to or greater than the fee itself.

(3) (i) The NMB will provide documents without charge or at reduced charges if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(ii) In determining whether disclosure is in the public interest under paragraph (b)(3)(i) of this section, the NMB will consider the following factors:

(A) *The subject of the request.* Whether the subject of the requested records concerns “the operations or activities of the government”;

(B) *The informative value of the information to be disclosed.* Whether the disclosure is “likely to contribute” to an understanding of government operations or activities;

(C) *The contribution to an understanding of the subject by the general public likely to result from disclosure.* Whether disclosure of the requested information will contribute to “public understanding”;

(D) *The significance of the contributions to the public understanding.* Whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities;

(E) *The existence and magnitude of a commercial interest.* Whether the re-

quester has a commercial interest that would be furthered by the requested disclosure; and, if so

(F) *The primary interest in disclosure.* Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is “primarily in the commercial interest of the requester.”

(iii) A request for a fee waiver based on the public interest under paragraph (b)(3)(i) of this section must address the factors of paragraph (b)(3)(ii) of this section as they apply to the request for records in order to be considered by the Chief of Staff.

(c) *Level of fees to be charged.* The level of fees to be charged by the NMB in accordance with the schedule set forth in paragraph (d) of this section, depends on the category of the requester. The fee levels to be charged are as follows:

(1) A request for documents appearing to be for commercial use will be charged to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought.

(2) A request for documents from an educational or non-commercial scientific institution will be charged for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(3) The NMB shall provide documents to requesters who are representatives of the news media for the cost of reproduction alone, excluding charges for the first 100 pages.

(4) The NMB shall charge requesters who do not fit into any of the categories above such fees which recover the full direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished

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without charge. All requesters must reasonably describe the records sought.

(d) The following fees shall be charged in accordance with paragraph (c) of this section:

(1) *Manual searches for records.* The salary rate (i.e., basic pay plus sixteen percent) of the employee(s) making the search. Search time under this paragraph and paragraph (d)(2) of this section may be charged for even if the NMB fails to locate responsive records or if records located are determined to be exempt from disclosure.

(2) *Computer searches for records.* The actual direct cost of providing the service, including computer search time directly attributable to searching for records responsive to a FOIA request, runs, and operator salary apportionable to the search.

(3) *Review of records.* The salary rate (i.e., basic pay plus sixteen percent) of the employee(s) conducting the review. This charge applies only to requesters who are seeking documents for commercial use and only to the review necessary at the initial administrative level to determine the applicability of any relevant FOIA exemptions, and not at the administrative appeal level or an exemption already applied.

(4) *Certification or authentication of records.* \$2.00 per certification or authentication.

(5) *Duplication of records.* Fifteen cents per page for paper copy reproduction of documents, which the NMB determined is the reasonable direct cost of making such copies taking into account the average salary of the operator and the cost of the reproduction machinery. For copies of records prepared by computer, such as tapes or printouts, the NMB shall charge the actual cost, including operator time, of production of the tape or printout.

(6) *Forwarding material to destination.* Postage, insurance and special fees will be charged on an actual cost basis.

(7) *Other costs.* All other direct costs of preparing a response to a request shall be charged to requester in the same amount as incurred by NMB.

(e) *Aggregating requests.* When the NMB reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of

evading the assessment of fees, the NMB will aggregate any such requests and charge accordingly.

(f) *Charging interest.* Interest at the rate prescribed in 31 U.S.C. 3717 may be charged those requesters who fail to pay fees charged, beginning on the thirtieth day following the billing date. Receipt of a fee by the NMB, whether processed or not, will stay the accrual of interest. If a debt is not paid, the agency may use the provisions of the Debt Collection Act of 1982, (Pub. L. 97-365, 96 Stat. 1749) including disclosure to consumer reporting agencies, for the purpose of obtaining payment.

(g) *Advance payments.* The NMB will not require a requester to make an advance payment, i.e., payment before work is commenced or continued on a request, unless:

(1) The NMB estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250. Then the NMB will notify the requester of the likely cost and obtain satisfactory assurances of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay a fee charge in a timely fashion (i.e., within thirty days of the date of the billing), in which case the NMB requires the requester to pay the full amount owed plus any applicable interest as provided above or demonstrate that he has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester. When the NMB acts under paragraph (g)(1) or (2) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., twenty working days from receipt of initial requests and twenty working days from receipt of appeals from initial denial, plus permissible extension of these time limits) will begin only after the NMB has received fee payments described in this paragraph (g).

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(h) *Payment.* Payment of fees shall be made by check or money order payable to the United States Treasury.

[63 FR 44395, Aug. 19, 1998]

§ 1208.7 Compliance with subpoenas.

(a) No person connected in any official way with the NMB shall produce or present any confidential records of the Board or testify on behalf of any party to any cause pending in any court, or before any board, commission, committee, tribunal, investigatory body, or administrative agency of the U.S. Government, or any State or Territory of the United States, or the District of Columbia, or any municipality with respect to matters coming to his knowledge in his official capacity or with respect to any information contained in confidential documents of the NMB, whether in answer to any order, subpoena, subpoena duces tecum, or otherwise without the express written consent of the Board.

(b) Whenever any subpoena or subpoena duces tecum calling for confidential documents, or the information contained therein, or testimony as described above shall have been served on any such person, he will appear in answer thereto, and unless otherwise expressly permitted by the Board, respectfully decline, by reason of this section, to produce or present such confidential documents or to give such testimony.

PART 1209—PUBLIC OBSERVATION OF NATIONAL MEDIATION BOARD MEETINGS

Sec.

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1209.02 Definitions.

1209.03 Conduct of National Mediation Board business.

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1209.05 Closing of meetings; reasons therefor.

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1209.09 Requests for records under Freedom of Information Act.

1209.10 Capacity of public observers.

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AUTHORITY: 5 U.S.C. 552(b)(g).

SOURCE: 42 FR 60739, Nov. 29, 1977, unless otherwise noted.

§ 1209.01 Scope and purpose.

(a) The provisions of this part are intended to implement the requirements of section 3(a) of the Government in the Sunshine Act, 5 U.S.C. 552b.

(b) It is the policy of the National Mediation Board that the public is entitled to the fullest practicable information regarding its decisionmaking processes. It is the purpose of this part to provide the public with such information while protecting the rights of individuals and the ability of the agency to carry out its responsibilities.

§ 1209.02 Definitions.

For purposes of this part:

(a) The terms *Board* or *Agency* mean the National Mediation Board, a collegial body composed of three members appointed by the President with the advice and consent of the Senate.

(b) The term *meeting* means the deliberations of at least two members of the Board where such deliberations determine or result in the joint conduct or disposition of official agency business, but does not include deliberations required or permitted or with respect to any information proposed to be withheld under by 5 U.S.C. 552b(d) or (e)/5 U.S.C. 552b(c).

§ 1209.03 Conduct of National Mediation Board business.

Members shall not jointly conduct or dispose of agency business other than in accordance with this part.

§ 1209.04 Open meetings.

Every portion of every Board meeting shall be open to public observation except as otherwise provided by § 1209.05 of this part.

§ 1209.05 Closing of meetings; reasons therefor.

(a) Except where the Board determines that the public interest requires otherwise, meetings, or portions thereof, shall not be open to public observation where the deliberations concern the issuance of a subpoena, the Board's

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participation in a civil action or proceeding or an arbitration, or the initiation, conduct or disposition by the Board of any matter involving a determination on the record after opportunity for a hearing, or any court proceeding collateral or ancillary thereto.

(b) Except where the Board determines that the public interest requires otherwise, the Board also may close meetings, or portions thereof, when the deliberations concern matters or information falling within the scope of 5 U.S.C. 552b (c)(1) (secret matters concerning national defense or foreign policy); (c)(2) (internal personnel rules and practices); (c)(3) (matters specifically exempted from disclosure by statute); (c)(4) (trade secrets and commercial or financial information obtained from a person and privileged or confidential); (c)(5) (matters of alleged criminal conduct or formal censure); (c)(6) (personal information where disclosure would cause a clearly unwarranted invasion of personal privacy); (c)(7) (certain materials or information from investigatory files compiled for law enforcement purposes); or (c)(9)(B) (disclosure would significantly frustrate implementation of a proposed agency action).

§ 1209.06 Action necessary to close meetings; record of votes.

A meeting shall be closed to public observation under § 1209.05, only when a majority of the members of the Board who will participate in the meeting vote to take such action.

(a) When the meeting deliberations concern matters specified in § 1209.05(a), the Board members shall vote at the beginning of the meeting, or portion thereof, on whether to close such meeting, or portion thereof, to public observation, and on whether the public interest requires that a meeting which may properly be closed should nevertheless be open to public observation. A record of such vote, reflecting the vote of each member of the Board, shall be kept and made available to the public at the earliest practicable time.

(b) When the meeting deliberations concern matters specified in § 1209.05(b), the Board shall vote on whether to close such meeting, or portion thereof, to public observation, and on whether the public interest requires

that a meeting which may properly be closed should nevertheless be open to public observation. The vote shall be taken at a time sufficient to permit inclusion of information concerning the open or closed status of the meeting in the public announcement thereof. A single vote may be taken with respect to a series of meetings at which the deliberations will concern the same particular matters where subsequent meetings in the series are scheduled to be held within one day after the vote is taken.

(c) Whenever any person whose interests may be directly affected by deliberations during a meeting, or a portion thereof, requests that the Board close that meeting, or portion thereof, to public observation for any of the reasons specified in 5 U.S.C. 552b(c)(5) (matters of alleged criminal conduct or formal censure), (c)(6) (personal information where disclosure would cause a clearly unwarranted invasion of personal privacy), or (c)(7) (certain materials or information from investigatory files compiled for law enforcement purposes), the Board members participating in the meeting upon request of any one member of the Board, shall vote on whether to close such meeting, or any portion thereof, for that reason. A record of such vote, reflecting the vote of each member of the Board participating in the meeting, shall be kept and made available to the public within one day after the vote is taken.

(d) After public announcement of a meeting as provided in § 1209.07 of this part, a meeting, or portion thereof, announced as closed may be opened or a meeting, or portion thereof, announced as open may be closed, only if a majority of the members of the Board who will participate in the meeting determine by a recorded vote that Board business so requires and that an earlier announcement of the change was not possible. The change made and the vote of each member on the change shall be announced publicly at the earliest practicable time.

(e) Before a meeting may be closed pursuant to § 1209.05 the General Counsel of the Board shall certify that in his or her opinion the meeting may properly be closed to public observation. The certification shall set forth

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each applicable exemptive provision for such closing. The certification shall be retained by the agency and made publicly available as soon as practicable.

§ 1209.07 Notice of meetings; public announcement and publication.

(a) A public announcement setting forth the time, place and subject matter of meetings or portions thereof closed to public observation pursuant to the provisions of § 1209.05(a) of this part, shall be made at the earliest practicable time.

(b) Except for meetings closed to public observation pursuant to the provisions of § 1209.05(a) of this part, the agency shall make public announcement of each meeting at least 7 days before the scheduled date of the meeting. The announcement shall specify the time, place and subject matter of the meeting, whether it is to be open to public observation or closed, and the name, address and phone number of an agency official designated to respond to requests for information about the meeting. The 7 day period for advance notice may be shortened only upon a determination by a majority of the members of the Board who will participate in the meeting that agency business requires that such meeting be called at an earlier date, in which event the public announcement shall be made at the earliest practicable time. A record of the vote to schedule a meeting at an earlier date shall be kept and made available to the public.

(c) Within one day after a vote to close a meeting, or any portion thereof, pursuant to the provisions of § 1209.05(b) of this part, the agency shall make publicly available a full written explanation of its action closing the meeting, or portion thereof, together with a list of all persons expected to attend the meeting and their affiliation.

(d) If after a public announcement required by paragraph (b) of this section has been made, the time and place of the meeting are changed, a public announcement of such changes shall be made at the earliest practicable time. The subject matter of the meeting may be changed after public announcement thereof only if a majority of the members of the Board who will participate

in the meeting determine that agency business so requires and that no earlier announcement of the change was possible. When such a change in subject matter is approved a public announcement of the change shall be made at the earliest practicable time. A record of the vote to change the subject matter of the meeting shall be kept and made available to the public.

(e) All announcements or changes thereof issued pursuant to the provisions of paragraphs (b) and (d) of this section, or pursuant to the provisions of § 1209.06(d), shall be submitted for publication in the FEDERAL REGISTER immediately following their release to the public.

(f) Announcement of meeting made pursuant to the provisions of this section shall be posted on a bulletin board maintained for such purpose at the Board's offices, 1425 K Street, NW., Washington, DC. Interested individuals or organizations may request the Chief of Staff, National Mediation Board, Washington, DC 20572 to place them on a mailing list for receipt of such announcements.

[42 FR 60739, Nov. 29, 1977, as amended at 64 FR 40287, July 26, 1999]

§ 1209.08 Transcripts, recordings or minutes of closed meetings; retention; public availability.

(a) For every meeting or portion thereof closed under the provisions of § 1209.05, the presiding officer shall prepare a statement setting forth the time and place of the meeting and the persons present, which statement shall be retained by the agency. For each such meeting or portion thereof there also shall be maintained a complete transcript or electronic recording of the proceedings, except that for meetings closed pursuant to § 1209.05(a) the Board may, in lieu of a transcript or electronic recording, maintain a set of minutes fully and accurately summarizing any action taken, the reason therefor and views thereof, documents considered, and the members' vote on each roll call vote.

(b) The agency shall maintain a complete verbatim transcript, a complete electronic recording, or a complete set of minutes for each meeting or portion thereof closed to public observation,

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for a period of at least one year after the close of the agency proceeding of which the meeting was a part, but in no event for a period of less than two years after such meeting.

(c) The agency shall make promptly available to the public copies of transcripts, electronic recordings or minutes maintained as provided in paragraphs (a) and (b) of this section, except to the extent the items therein contain information which the agency determines may be withheld pursuant to the provisions of 5 U.S.C. 552b(c).

(d) Upon request in accordance with the provisions of this paragraph and except to the extent they contain information which the agency determines may be withheld pursuant to the provisions of 5 U.S.C. 552b(c), copies of transcripts or minutes, or transcriptions of electronic recordings including the identification of speakers, shall be furnished subject to the payment of duplication costs in accordance with the schedule of fees set forth in § 1208.06 of the Board's Rules, and the actual cost of transcription. Requests for copies of transcripts or minutes, or transcriptions of electronic recordings of Board meetings shall be directed to the Chief of Staff, National Mediation Board, Washington, DC 20572. Such requests shall reasonably identify the

records sought and include a statement that whatever costs are involved in furnishing the records will be acceptable or, alternatively, that costs will be acceptable up to a specified amount. The Board may determine to require prepayment of such costs.

[42 FR 60739, Nov. 29, 1977, as amended at 64 FR 40287, July 26, 1999]

§ 1209.09 Requests for records under Freedom of Information Act.

Requests to review or obtain copies of agency records other than notices or records prepared under this part may be pursued in accordance with the Freedom of Information Act (5 U.S.C. 552). Part 1208 of the Board's Rules addresses the requisite procedures under that Act.

§ 1209.10 Capacity of public observers.

The public may attend open Board meetings for the sole purpose of observation. Observers may not participate in meetings unless expressly invited or otherwise interfere with the conduct and disposition of agency business. When a portion of a meeting is closed to the public, observers will leave the meeting room upon request to enable discussion of the exempt matter therein under consideration.